

REMARKS

I. Introduction

Claims 21, 22, 24-30 and 32-43 are pending in the present application. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

II. Rejection of Claims 25 and 36 Under 35 U.S.C. §112

Claims 25 and 36 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. It is believed that the presently pending claims satisfy the requirements of 35 U.S.C. 112, first paragraph.

For instance, the Office Action contends that, with respect to claims 25 and 36, “the recitation that the mask opening portion substantially maintains its shape as the mask opening portion is inserted into and seated within a patient is not supported by the specification.” Office Action at page 2. Applicant respectfully disagrees. For example, various figures, e.g., Figure 1, illustrate the mask opening portion having a shape prior to the mask opening portion being inserted into and seated within a patient. In addition, other figures, e.g., Figures 7 and 8, illustrate the mask opening portion having substantially the same shape after the mask opening portion has been inserted into and seated within a patient. Thus, since the Specification explicitly discloses that the mask opening portion has the same shape both before and after the mask opening portion is inserted into and seated within a patient, then it is evident that the Specification provides support under 35 U.S.C. § 112 for the recitation that “that the mask opening portion substantially maintains its shape as the mask opening portion is inserted into and seated within a patient.” However, for the purposes of expediting the prosecution of this application, Applicant has amended claims 25 and 36 to delete the language objected to by the Examiner.

It is therefore respectfully submitted that claims 25 and 36 fully comply with the requirements of 35 U.S.C. § 112, first paragraph, and withdrawal of this rejection is therefore respectfully requested.

III. Allowable Subject Matter

Applicant gratefully acknowledge that claims 21, 22, 24, 26-30, 32-34 and 37-43 are allowed.

IV. Request For Interference

Applicants respectfully request that, since it is believed that all of the pending claims of the present application are now in condition for allowance, an interference be

declared between claims 21, 22, 24-30 and 32-43 of the present application and claims 1 to 39 of U.S. Patent No. 6,386,199 ("the '199 patent"), for the reasons set forth in Applicant's previously filed "Amendment and Request for Interference" filed in the U.S. Patent and Trademark Office on May 13, 2003 and in each subsequent Request for Interference filed thereafter, and additionally for the reasons set forth below.

As set forth above, Applicant has amended claims 25 and 36 to recite "the mask opening portion is formed from a partially flexible material." Claims 21 and 30, from claims 25 and 36 depend, respectively, also recites that the "mask opening portion at the distal end of the elongate tubular member [is] for insertion into the mouth and pharynx of a patient." The Specification states at page 13, lines 4-9, that "[t]he mask opening portion 110 has a shape 112 surrounding the mask opening 111 which is designed to approximate the shape of the laryngeal opening of the larynx L, thereby covering the laryngeal opening without sealing against the tissues surrounding the laryngeal opening." In addition, the Specification states at page 13, lines 9-15, that "[i]n this way, the mask opening portion 110 provides virtually complete coverage of the laryngeal opening of the larynx L, helping to prevent the incursion or ingress of anything into the patient's airway other than the gases delivered through the large conduit 204 of the airway tube 200."

Claims 6 and 26 of the '199 patent recites that "the housing is flexible and soft to provide some give as the housing is inserted into a patient and rigid enough to prevent collapse of the housing by the epiglottis and tissue surrounding the hypopharynx as the housing is inserted into and seated within a patient." The '199 patent states at col. 5, lines 1-4, that "the present invention further provides elongated lateral extension walls which are relatively flexible and soft so that there is at least some "give" as the oral airway is inserted into the patient." In addition, the '199 patent states at col. 5, lines 4-11 that "[t]he particular firmness of the walls must strike a balance between the need to hold the hypopharyngeal and perilaryngeal structures away from the glottis, the need to move the soft tonsillar and oropharyngeal structures to the side as the oral airway is inserted, and the desire for the oral airway to be able to bend inwardly when inserted through the back of the patient's mouth." Still further, the '199 patent states at col. 5, lines 11-16 that "[l]ikewise, the body member of the oral airway is of sufficient softness and pliability to bend during insertion and to accommodate different angles once successfully inserted into the patient, since a given patient's head and neck may be slightly flexed or extended to provide optimal positioning for mask ventilation." Therefore, the mask opening portion/ housing of the present application and the '199 patent are described as performing the same function, e.g., having sufficient flexibility to allow for its insertion into the patient, while having sufficient rigidity to prevent collapse of the /mask opening portion/housing by the epiglottis and tissue surrounding the hypopharynx as and when the mask opening portion/housing is inserted into and seated within a patient.

Applicant therefore respectfully maintains that, by virtue of the fact that the mask opening portion/ housing of the present application and the '199 patent perform the same function and in the context of the claims are directed to the same patentable invention, an interference should be declared between claims 25 and 36 of the present application — which include the limitations of “the mask opening portion is formed from a partially flexible material” and the “mask opening portion at the distal end of the elongate tubular member [is] for insertion into the mouth and pharynx of a patient” — and claims 6 and 26 of the '199 patent — which include the limitation of “the housing is flexible and soft to provide some give as the housing is inserted into a patient and rigid enough to prevent collapse of the housing by the epiglottis and tissue surrounding the hypopharynx as the housing is inserted into and seated within a patient.”

V. Conclusion

Applicants respectfully submit that all of the pending claims of the present application are now in condition for allowance. Prompt reconsideration and allowance of the present application, and the declaration of the above-referenced interference proceeding, are therefore earnestly solicited.

VI. Fees

The Commissioner is authorized to charge any necessary fees or credit any overpayments under 37 C.F.R. §§ 1.16 and 1.17 to Deposit Account No. 11-0600.

Respectfully submitted,

KENYON & KENYON



By:

Thomas C. Hughes
Reg. No. 42,674

Dated: Feb. 21, 2006

One Broadway
New York, New York 10004
(212) 425-7200